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Paper No. 11

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MAY 12 2003

OFFICE OF PETITIONS

In re Application of
Gektin et al.
Application No. 09/703,282
Filed: October 31, 2000
Attorney Docket No. Sun-P5363

DECISION ON PETITION

This is a decision on the petition filed January 2, 2003
(Certificate of Mailing December 27, 2002), pursuant to 37 CFR
1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to
timely file a proper reply to the non-final Office action mailed
March 18, 2002. This Office action set a shortened statutory
period for reply of three (3) months from the mail date of the
action. An amendment was filed on June 17, 2002. However, in an
Office action mailed September 11, 2002, applicant was advised
that the amendment had been considered, but not entered. No
proper reply having been received and no extension of time
obtained, the application became abandoned effective June 18,
2002. The instant petition precedes the mailing of a courtesy
Notice of Abandonment.

The petition includes the required reply in the form of an
amendment, payment of the petition fee¹, and a statement of
unintentional delay. The statement of unintentional delay is
made by patent attorney William P. Wilbar on behalf of Sun
Microsystems, Inc., assignee of record at the time of abandonment
of the application. In addition, patent attorney Wilbar states
that he has personal knowledge that the application was
unintentionally abandoned. 37 CFR 1.137(b)(3) requires a
statement that "the entire delay in filing the required reply
from the due date for the reply until the filing of a grantable
petition pursuant to 37 CFR 1.137(b) was unintentional." The
statement contained in the instant petition varies from the
language required by 37 CFR 1.137(b)(3). The statement contained
in the instant petition is being construed as the statement
required by 37 CFR 1.137(b)(3). Petitioner must notify the
Office if this is **not** a correct interpretation of the statement
contained in the instant petition.

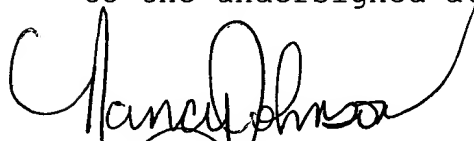
¹ The deficiency of \$40, due to the increase in petition fees in
October 2001, has been charged to Deposit Account No. 50-0612, as authorized.

Furthermore, the Office is relying on attorney Wilbar's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

Receipt of the power of attorney, and consequent, change of correspondence address, filed March 26, 2003, is acknowledged and made of record.

The application file is being forwarded to Technology Center 3743 for consideration of the response filed January 2, 2003.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions